IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

MFA.No. 588 of 2002(B)

OPMV.594/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT: APPELLANTS/PETITIONERS:

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1. JOSEPH, S/O. CHACKO, KOLLILYIL HOUSE,
   P.O. KILILYANTHARA, KANNUR DISTRICT.

2. ANNAMMA, W/O. JOSEPH, DO. DO.

3. KOCHURANI, D/O. VARGHESE, DO. DO.

4. JOMMY (MINOR), S/O. JOMON, DO. DO.

5. JESMI, (MINOR) D/O. JOMON,
   REP. BY MOTHER KOCHURANI, DO. DO.

6. JOBI, (MINOR) S/O. JOMON, DO. DO.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: RESPONDENTS/RESPONDENTS 1 TO 3:

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1. M.K. GOPAL, S/O. RUKKUMAYYA GOWDA,
   SHINA NAGAR HOUSE, P.O. PADIL,
   MANGALORE-7.

2. KESAVAKAMATH, GANESH GRAHA,
   BHAGAVATHI NAGAR, MAIN KODIALGUTHU,
   MANGALORE-3.

3. THE ORIENTAL INSURANCE CO. LTD.,
   IIND FLOOR, P.M. ROA ROAD,
   MANGALORE (2797/1997).

BY ADV. SRI.ANCHAL C.VIJAYAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 588 OF 20O2

Dated this the 7th day of September, 2007

JUDGMENT

Koshy, J.

Wife, three minor children and parents of a jeep driver applied for compensation claiming an amount of Rs.6,00,000/- contending that the jeep driver died due to fatal injuries suffered by him in an accident occurred on 5.7.1997, when the jeep driven by him was hit by a stage carriage driver by the first respondent, owned by the second respondent and insured by the third respondent. The Tribunal found that the accident occurred due to the negligence of the driver of the bus. The Tribunal awarded a total compensation of Rs.2,19,000/- with interest at 9% per annum from the date of petition till realisation and with proportionate costs from respondents 1 to 3 jointly and severally, payable by the Insurance Company. The quantum of compensation is only disputed. It is not disputed that the claimant was a driver by profession. He had professional licence with badge and competent to drive commercial vehicles. The Tribunal has fixed only Rs.1,500/- as monthly income, even though the claimants claimed that he was getting income of

Rs.4,000/- per month. The accident occurred in 1997. At that time a professional qualified driver who is licensed to drive commercial vehicles will get minimum Rs.150/- per day. In the above circumstances, we are of the opinion that the Tribunal ought to have fixed atleast Rs.3,000/- as the monthly income. It is submitted that the Apex Court in many cases held that for fixing multiplier, second schedule of the Motor Vehicles Act should be taken as the guideline and under the second schedule, if a motor accident victim is aged 39, the multiplier would be 16. But the Tribunal has taken only 15 as the multiplier. It is further contended that under the present lifespan, a higher multiplier should be granted especially considering the fact that the deceased was maintaining a family of seven persons. However, considering the total amount and considering the fact that the second schedule has to be taken only as a guideline, we are not interfering with 15 multiplier fixed by the Tribunal. Therefore, for finding out monthly loss of dependency from Rs.3,000/- monthly income, one-third has to be deducted for personal expenses. If Rs.2,000/- is taken as monthly loss of dependency, compensation payable will be Rs.3,60,000/- (2000 x 12 x 15). As the Tribunal has awarded Rs.1,80,000/- for the loss of dependency, an additional amount of Rs.1,80,000/- has to be

deposited by the Insurance Company. It is contended that the compensation granted on other heads is also very meagre. But considering the total amount of compensation, we are not increasing the same. The additional amount of Rs.1,80,000/- will be deposited by the third respondent with 7% interest from the date of application to the date of deposit and the same shall be disbursed to the claimants on same proportion as detailed by the Tribunal.

The appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, J.

M.F.A.NO. 588 OF 2002

JUDGMENT

7.9.2007